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Jairam R. Lingappa

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04/24/2009

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EXAMINER

KINSEY WHITE, NICOLE ERIN

ART UNIT

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1648

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

DETAILED ACTION

Withdrawn Rejections & Objections

The rejection of claim 25 under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter has been withdrawn.

The objection under 35 U.S.C. 132(a) has been withdrawn.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 25 and 26 are rejected under 35 U.S.C. 102(b) as being anticipated by McGuire et al. (Journal of General Virology, 1994, 75:895-900).

The claims are directed to antibodies to viral capsids of a non-naturally occurring virus.

McGuire et al. discloses infected cells with recombinant vaccinia viruses expressing the equine infectious anaemia virus (EIAV) gag gene (VGag) or gag plus the 5' pol encoding protease (VGag/PR). The cells were evaluated with monoclonal antibody to a p26 capsid protein linear epitope (QEISKFLTD) (see, for example, the abstract and page 896, left column).

The recombinant vaccinia virus of McGuire et al. is non-naturally occurring and the monoclonal antibody is directed to the p26 capsid protein.

Claims 25 and 26 are rejected under 35 U.S.C. 102(b) as being anticipated by Hardy et al. (Virology, 1996, 217:252-261).

The claims are directed to antibodies to viral capsids of a non-naturally occurring virus.

Hardy et al. discloses infecting insect cells with recombinant baculovirus expressing Norwalk virus (NV) capsid protein. Hardy et al. also discloses monoclonal antibodies that recognize the rNV capsid proteins expressed in the infected insect cells (see, for example, the abstract and page 252, right column).

The recombinant baculovirus of Hardy et al. is non-naturally occurring and the monoclonal antibody is directed to the capsid protein of the recombinant virus.

Response to Arguments

In the reply dated November 3, 2008, applicants argue that McGuire et al. and Hardy et al. teach the formation of antibodies to naturally occurring viruses and not to a capsid of a non-naturally occurring virus. This argument has been fully considered, but not found to be persuasive.

The virus used by McGuire et al. is a recombinant vaccinia virus expressing the equine infectious anaemia virus gag gene. Such a recombinant virus is non-natural and the antibody of McGuire et al. was against the p26 capsid protein.

The virus used by Hardy et al. is a recombinant baculovirus expressing Norwalk virus capsid protein. Such a recombinant virus is non-natural and the antibody of Hardy et al. was against the capsid protein of the recombinant virus.

No claim is allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to NICOLE KINSEY WHITE whose telephone number is (571)272-9943. The examiner can normally be reached on Monday through Friday from 9:00 am to 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Nickol can be reached on (571) 272-0835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

/Nicole Kinsey White/
Examiner, Art Unit 1648

/Stacy B Chen/
Primary Examiner, Art Unit 1648